

AMENDED IN SENATE SEPTEMBER 8, 2003

AMENDED IN SENATE SEPTEMBER 2, 2003

AMENDED IN SENATE JULY 15, 2003

AMENDED IN SENATE JULY 3, 2003

AMENDED IN SENATE JUNE 19, 2003

AMENDED IN ASSEMBLY APRIL 30, 2003

AMENDED IN ASSEMBLY APRIL 21, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1688

**Introduced by Assembly Member Goldberg
(Coauthors: Assembly Members Koretz and Montanez)**

February 21, 2003

An act to add and repeal Part 8.5 (commencing with Section 2050) of Division 2 of the Labor Code, relating to car washes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1688, as amended, Goldberg. Car washes.

Existing law regulates various aspects of workplace and employee safety and health.

This bill would, until January 1, 2007, regulate the industry of car washing and polishing by providing specific recordkeeping requirements that employers of car washers must implement with regard to car washer wages, hours, and working conditions. The bill would require employers of car washers to register with the Labor

Commissioner and pay a specified registration fee. Failure to register pursuant to these provisions would be subject to a civil fine of \$100 for each calendar day of violation not to exceed \$10,000. These fines and registration fees would be deposited in the Car Wash Worker Restitution Fund and the Car Wash Worker Fund, which this bill would create, for disbursement by the commissioner, upon appropriation by the Legislature.

The bill would state the intent of the Legislature to require the Labor Commissioner to report on labor law violations and enforcement in the car washing and polishing industry.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
2 following:
- 3 (a) California is home to hundreds of full-time car washes that
4 employ tens of thousands of car wash workers.
- 5 (b) The work performed by car wash employees is laborious,
6 fast paced, and potentially hazardous.
- 7 (c) Car wash employees work long hours and may service
8 hundreds of vehicles on any given workday.
- 9 (d) According to various legal advocates, the car wash industry
10 is plagued with labor law violations, including minimum wage,
11 overtime, and rest and meal period violations.
- 12 (e) Some car wash employees, commonly known as
13 “propineros,” are not paid a wage by their employers and receive
14 only the tips given by customers.
- 15 (f) Some other car wash employees are paid below the
16 minimum wage and not paid at an overtime rate for overtime hours
17 worked.
- 18 (g) A number of car wash employees have been harassed,
19 intimidated, and mistreated by their employers because of their
20 immigration status.
- 21 (h) As a result of low wages and widespread labor law
22 violations, some car wash employees are forced to work in
23 substandard working conditions.
- 24 (i) Existing labor laws and enforcement efforts have failed to
25 remedy these problems.



(j) Therefore, it is the intent of the Legislature, in enacting this act, to establish a system of registration, bonding requirements, and enforcement to impose prompt and effective civil sanctions for the violation of the provisions set forth in this act or any provision of law applicable to the employment of workers in the car washing and polishing industry.

SEC. 2. Part 8.5 (commencing with Section 2050) is added to Division 2 of the Labor Code, to read:

PART 8.5. CAR WASHES

CHAPTER 1. GENERAL PROVISIONS

2050. The enactment of this part is an exercise of the police power of the State of California for the protection for the public welfare, prosperity, health, safety, and peace of its people. The civil penalties provided by this chapter are in addition to any other penalty provided by law.

2051. As used in this part:

(a) “Car washing and polishing” means washing, cleaning, drying, polishing, detailing, servicing, or otherwise providing cosmetic care to vehicles. “Car washing and polishing” does not include motor vehicle repair, as defined in Section 9880.1 of the Business and Professions Code.

(b) (1) “Employer” means any individual, partnership, corporation, limited liability company, joint venture, or association engaged in the business of car washing and polishing that engages any other individual in providing those services.

(2) “Employer” does not include any charitable, youth, service, veteran, or sports group, club, or association that conducts car washing and polishing on an intermittent basis to raise funds for charitable, education, or religious purposes. “Employer” does not include any licensed vehicle dealer, car rental agency, or automotive repair business that conducts car washing and polishing ancillary to its primary business of selling, leasing, or servicing vehicles. “Employer” does not include any self-service car wash or automated car wash that has employees for cashiering or maintenance purposes only.

(c) “Employee” means any person, including an alien or minor, who renders actual car washing and polishing services in

1 any business for an employer, whether for tips or for wages, and
2 whether wages are calculated by time, piece, task, commission, or
3 other method of calculation, and whether the services are rendered
4 on a commission, concessionaire, or other basis.

5 (d) “Commissioner” means the Labor Commissioner.

6 2052. Every employer shall keep accurate records for three
7 years, showing all of the following:

8 (a) The names and addresses of all employees engaged in
9 rendering actual services for any business of the employer.

10 (b) The hours worked daily by each employee, including the
11 times the employee begins and ends each work period.

12 (c) All gratuities received daily by the employer, whether
13 received directly from the employee or indirectly by deduction
14 from the wages of the employee or otherwise.

15 (d) The wage and wage rate paid each payroll period.

16 (e) The age of all minor employees.

17 (f) Any other conditions of employment.

18 2053. The Division of Labor Standards and Enforcement
19 shall enforce this chapter. The commissioner may adopt any
20 regulations necessary to carry out the provisions of this chapter.

21
22 CHAPTER 2. REGISTRATION
23

24 2054. Every employer shall register with the commissioner
25 annually.

26 2055. The commissioner may not permit any employer to
27 register, nor may the commissioner permit any employer to renew
28 registration until all of the following conditions are satisfied:

29 (a) The employer has applied for registration to the
30 commissioner by presenting proof of compliance with the local
31 government’s business licensing or regional regulatory
32 requirements.

33 (b) The employer has obtained a surety bond issued by a surety
34 company admitted to do business in this state. The principal sum
35 of the bond shall be not less than fifteen thousand dollars
36 (\$15,000). The employer shall file a copy of the bond with the
37 commissioner.

38 (1) The bond required by this section shall be in favor of, and
39 payable to the people of the State of California and shall be for the
40 benefit of any employee damaged by his or her employer’s failure

1 to pay wages, interest on wages, or fringe benefits, or damaged by
2 violation of Section 351 or 353.

3 (2) Thirty days prior to the cancellation or termination of any
4 surety bond required by this section, the surety shall send written
5 notice to both the employer and the commissioner, identifying the
6 bond and the date of the cancellation or termination.

7 (3) An employer may not conduct any business until the
8 employer obtains a new surety bond and files a copy of it with the
9 commissioner.

10 (c) The employer has documented that a current workers'
11 compensation insurance policy is in effect for the employees.

12 (d) The employer has paid the fees established pursuant to
13 Section 2059.

14 2056. When a certificate of registration is originally issued or
15 renewed under this chapter, the commissioner shall provide
16 related and supplemental information to the registrant regarding
17 business administration and applicable labor laws.

18 2057. Proof of registration shall be by an official Division of
19 Labor Standards Enforcement registration form. Each employer
20 shall post the registration form where it may be read by the
21 employees during the workday.

22 2058. At least 30 days prior to the expiration of each
23 registrant's registration, the commissioner shall mail a renewal
24 notice to the last known address of the registrant. However,
25 omission of the commissioner to provide the renewal notice in
26 accordance with this subdivision may not excuse a registrant from
27 making timely application for renewal of registration, may not be
28 a defense in any action or proceeding involving failure to renew
29 registration, and may not subject the commissioner to any legal
30 liability.

31 ~~2059. (a) The Department of Industrial Relations shall~~
32 ~~establish by regulation an annual registration fee for car wash~~
33 ~~employers~~

34 2059. (a) *The commissioner shall collect from employers a*
35 *registration fee of two hundred fifty dollars (\$250) for each branch*
36 *location. The commissioner may periodically adjust the*
37 *registration fee for inflation to ensure that the fee is sufficient to*
38 *fund all costs to administer and enforce the provisions of this part.*

39 (b) In addition to the fee ~~established pursuant to specified in~~
40 subdivision (a), each employer shall be assessed an annual fee of

1 ~~seventy-five dollars (\$75)~~ *fifty dollars (\$50) for each branch*
2 *location* which shall be deposited in the Car Wash Worker
3 Restitution Fund.

4 2060. No employer may conduct any business without
5 complying with the registration and bond requirements of this
6 chapter.

7 2061. The commissioner may not approve the registration of
8 any employer until all of the following conditions are satisfied:

9 (a) The employer has executed a written application, in a form
10 prescribed by the commissioner, subscribed, and sworn by the
11 employer containing the following:

12 (1) The name of the business entity and, if applicable, its
13 fictitious or “doing business as” name.

14 (2) The form of the business entity and, if a corporation, all of
15 the following:

16 (A) The date of incorporation.

17 (B) The state in which incorporated.

18 (C) If a foreign corporation, the date the articles of
19 incorporation were filed with the California Secretary of State.

20 (D) Whether the corporation is in good standing with the
21 Secretary of State.

22 (3) The federal employer identification number (FEIN) and the
23 state employer identification number (SEIN) of the business.

24 (4) The business’ address and telephone number and, if
25 applicable, the addresses and telephone numbers of any branch
26 locations.

27 (5) Whether the application is for a new or renewal registration
28 and, if the application is for a renewal, the prior registration
29 number.

30 (6) The names, residential addresses, telephone numbers, and
31 Social Security numbers of the following persons:

32 (A) All corporate officers, if the business entity is a
33 corporation.

34 (B) All persons exercising management responsibility in the
35 applicant’s office, regardless of form of business entity.

36 (C) All persons, except bona fide employees on regular
37 salaries, who have a financial interest of 10 percent or more in the
38 business, regardless of the form of business entity, and the actual
39 percent owned by each of those persons.

1 (7) The policy number, effective date, expiration date, and
2 name and address of the carrier of the applicant business' current
3 workers' compensation coverage.

4 (8) Whether any persons named in response to subparagraphs
5 (A), (B), or (C) of subparagraph (6) of this section presently:

6 (A) Owe any unpaid wages.

7 (B) Have unpaid judgments outstanding.

8 (C) Have any liens or suits pending in court against himself or
9 herself.

10 (D) Owe payroll taxes, or personal, partnership, or corporate
11 income taxes, Social Security taxes, or disability insurance.

12 An applicant who answers affirmatively to any item described
13 in paragraph (8) shall provide, as part of the application, additional
14 information on the unpaid amounts, including the name and
15 address of the party owed, the amount owed, and any existing
16 payment arrangements.

17 (9) Whether any persons named in response to subparagraphs
18 (A), (B), or (C) of paragraph (6) of this section have ever been cited
19 or assessed any penalty for violating any provision of the Labor
20 Code.

21 An applicant who answers affirmatively to any item described
22 in paragraph (9) shall provide additional information, as part of the
23 application, on the date, nature of citation, amount of penalties
24 assessed for each citation, and the disposition of the citation, if any.
25 The application shall describe any appeal filed. If the citation was
26 not appealed, or if it was upheld on appeal, the applicant shall state
27 whether the penalty assessment was paid.

28 (b) The employer has paid a registration fee to the
29 commissioner pursuant to subdivision (d) of Section 2055.

30 2062. The commissioner may not register or renew the
31 registration of an employer in any of the following circumstances:

32 (a) The employer has not fully satisfied any final judgment for
33 unpaid wages due to an employee or former employee of a
34 business for which the employer is required to register under this
35 chapter.

36 (b) The employer has failed to remit the proper amount of
37 contributions required by the Unemployment Insurance Code or
38 the Employment Development Department had made an
39 assessment for those unpaid contributions against the employer

1 that has become final and the employer has not fully paid the
2 amount of delinquency for those unpaid contributions.

3 (c) The employer has failed to remit the amount of Social
4 Security and Medicare tax contributions required by the Federal
5 Insurance Contributions Act (FICA) to the Internal Revenue
6 Service and the employer has not fully paid the amount or
7 delinquency for those unpaid contributions.

8 2063. On the Web site of the Department of Industrial
9 Relations the Labor Commissioner shall post a list of registered car
10 washing and polishing businesses, including the name, address,
11 registration number, and effective dates of registration.

12 2064. An employer who fails to register pursuant to Section
13 2054 is subject to a civil fine of one hundred dollars (\$100) for each
14 calendar day, not to exceed ten thousand dollars (\$10,000), the
15 employer conducts car washing and polishing while unregistered.

16 ~~2065. (a) The Car Wash Worker Restitution Fund is~~
17 ~~established in the State Treasury. Seventy-five dollars (\$75) of~~
18 ~~each registrant's annual registration fee, required pursuant to~~
19 ~~subdivision (d) of Section 2055, shall be deposited in this fund. In~~
20 ~~addition, fines collected pursuant to Section 2064 shall be~~
21 ~~deposited into the fund. Moneys from the fund shall be disbursed,~~
22 ~~upon appropriation by the Legislature, by the commissioner only~~
23 ~~to persons determined by the commissioner to have been damaged~~
24 ~~by the failure to pay wages and penalties and other related damages~~
25 ~~by any car wash or polishing employer, to ensure the payment of~~
26 ~~wages and penalties and other related damages. Any disbursed~~
27 ~~funds subsequently recovered by the commissioner shall be~~
28 ~~returned to the fund.~~

29 ~~(b) The Car Wash Worker Fund is established in the State~~
30 ~~Treasury. Upon appropriation by the Legislature, fifty percent of~~
31 ~~the remainder of the registrant's annual registration fee not~~
32 ~~deposited into the fund pursuant to subdivision (d) of Section 2055~~
33 ~~shall be applied to costs incurred by the commissioner in~~
34 ~~administering the provisions of this section and enforcement and~~
35 ~~investigation of the car washing and polishing industry.~~

36 *2065. (a) (1) The Car Wash Worker Restitution Fund is*
37 *established in the State Treasury. Fifty dollars (\$50) of each*
38 *registrant's annual registration fee required pursuant to Section*
39 *2059 shall be deposited into this fund. In addition, 50 percent of*

1 *the fines collected pursuant to Section 2064 shall be deposited into*
2 *the fund.*

3 *(2) Moneys from the fund shall be disbursed, upon*
4 *appropriation by the Legislature, by the commissioner only to*
5 *persons determined by the commissioner to have been damaged by*
6 *the failure to pay wages and penalties and other related damages*
7 *by any employer; to ensure the payment of wages and penalties and*
8 *other related damages. Any disbursed funds subsequently*
9 *recovered by the commissioner shall be returned to the fund.*

10 *(3) The Department of Industrial Relations may establish*
11 *through regulation any procedures necessary to carry out the*
12 *provisions of this section.*

13 *(b) The Car Wash Worker Fund is established in the State*
14 *Treasury. Upon appropriation by the Legislature, the remainder of*
15 *the registrant's annual registration fee collected pursuant to*
16 *Section 2059 shall be applied to costs incurred by the*
17 *commissioner in administering the provisions of this part and*
18 *enforcement and investigation of the car washing and polishing*
19 *industry.*

20
21 CHAPTER 3. SUCCESSORSHIP
22

23 2066. A successor to any employer that is engaged in car
24 washing and polishing that owed wages and penalties to the
25 predecessor's former employee or employees is liable for those
26 wages and penalties if the successor meets any of the following
27 criteria:

28 (a) Uses substantially the same facilities or workforce to offer
29 substantially the same services as the predecessor employer.

30 (b) Shares in the ownership, management, control of the labor
31 relations, or interrelations of business operations with the
32 predecessor employer.

33 (c) Employs in a managerial capacity any person who directly
34 or indirectly controlled the wages, hours, or working conditions of
35 the affected employees of the predecessor employer.

36 (d) Is an immediate family member of any owner, partner,
37 officer, or director of the predecessor employer of any person who
38 had a financial interest in the predecessor employer.
39

CHAPTER 4. OPERATION

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3 2067. This part shall remain in effect only until January 1,
4 2007, and as of that date is repealed, unless a later enacted statute,
5 that is enacted before January 1, 2007, deletes or extends that date.

6 SEC. 3. It is the intent of the Legislature to instruct the Labor
7 Commissioner, prior to January 1, 2007, to study and report to the
8 Legislature on the status of labor law violations and enforcement
9 in the car washing and polishing industry.

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